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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Geo-Seis Helicopters, Inc.

File: B-294543

Date: November 22, 2004

William T. Browder for the protester.

George N. Brezna, Esq., Department of the Navy, for the agency.

John L. Formica, Esq., and Guy R. Petrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the contracting agency unreasonably evaluated the awardee's proposal is denied where the record shows that the agency's evaluation was reasonable and in accordance with the terms of the solicitation.

2. Protest that the agency improperly waived a solicitation requirement that offers include proof of ownership or a binding agreement to purchase or charter the aircraft needed to perform the contract is denied where neither the protester's nor the awardee's offers included the required information or documentation, and the record establishes that the protester was not prejudiced by the agency's effective waiver of the requirement.

DECISION

Geo-Seis Helicopters, Inc. protests the award of a contract to Evergreen Helicopters of Alaska, Inc. under request for proposals (RFP) No. N00033-04-R-1000, issued by the Department of the Navy, for a helicopter detachment (personnel, equipment, and aircraft) to perform air logistics services.

We deny the protest.

The RFP provided for the award of a fixed-price contract, for a base period of 1 year with four 1-year options, to the offeror submitting the proposal representing the best value to the government based upon the following evaluation factors listed in descending order of importance: technical quality; price; past performance; and socio-economic considerations. RFP § M 2.

The solicitation provided for the submission of, among other things, price, technical, and past performance proposals. RFP § L 4. Offerors were informed that their technical proposals “must demonstrate an ability to comply with all requirements covered in the solicitation,” and that “[g]eneral statements that the offeror can or will comply with the requirements . . . will not constitute compliance.” *Id.* For example, the technical proposals were to include “a narrative of the aircraft’s capabilities . . . and any supporting documentation that demonstrates testing conducted to ensure the aircraft meets the performance specifications of the solicitation.” Technical proposals were also to include “proof of [aircraft] ownership by the offeror, or a binding agreement to purchase/charter the aircraft if awarded the contract.” RFP § L 6.

The agency received proposals from only Geo-Seis (the incumbent contractor) and Evergreen by the RFP’s closing date. Agency Report (AR), Tab 12, Source Selection Decision, at 1. The proposals were evaluated, discussions conducted, and final proposal revisions requested and received. Geo-Seis’s and Evergreen’s proposals were each evaluated as “excellent” under the technical and past performance factors and “good” under the socio-economic factor, with Geo-Seis proposing a price of \$88,277,871, and Evergreen a price of \$65,536,000. Given Geo-Seis’s status as a Historically Underutilized Business Zone (HUBZone) firm, the agency considered Evergreen’s price for evaluation purposes as totaling \$72,089,600.¹ The source selection authority (SSA) determined that Evergreen’s proposal represented the best value to the government, and award was made to that firm. AR, Tab 12, Source Selection Decision, at 1-3.

Geo-Seis argues that the agency should have rejected Evergreen’s proposal under the technical factor, rather than evaluating it as “excellent.” In this regard, Geo-Seis argues that Evergreen’s proposal failed to demonstrate certain technical capabilities, specifically that the helicopters it proposed have instrument flight rules (IFR) certification, “the capability to be hot-fueled using an approved closed-circuit refueling nozzle,” and a rotor blade “folding system.” Protest at 5-7; *see* RFP §§ C.1.3.9, 4.2.2, 4.3.1, 4.3.4.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable and in accordance with the terms of the solicitation. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. *Landoll Corp.*, B-291381 *et al.*, Dec. 23, 2002, 2003 CPD ¶ 40 at 8.

¹ The RFP incorporated by reference Federal Acquisition Regulation § 52.219-4, providing for a 10-percent HUBZone price evaluation preference.

As pointed out by the agency, the RFP informed offerors that they were required in their proposals to “demonstrate an ability to comply with all requirements covered in the solicitation.” RFP § L 6.1. In this regard, the record reflects that although the agency determined that Evergreen’s proposal demonstrated an ability to comply with the RFP’s IFR and blade folding requirements, the agency during discussions sought additional information from Evergreen as to the firm’s ability to meet the solicitation’s requirements regarding fueling.² Ultimately, the agency found that Evergreen’s proposal demonstrated Evergreen’s ability to comply with the RFP’s IFR, blade folding, and fueling requirements. Based upon our review of the record, which includes the agency’s evaluation and discussions documentation, as well as the awardee’s proposal, we find the agency’s determinations here to be reasonable.

The protester also asserts that Evergreen’s proposal failed to include “proof of [aircraft] ownership by the offeror, or a binding agreement to purchase/charter the aircraft if awarded the contract” as required by the RFP. Protest at 8; see RFP § L 6.

While conceding that the Evergreen proposal included only a “letter of intent” executed by the awardee and a vendor to acquire the aircraft should Evergreen be awarded the contract, the agency points out, and the record confirms, that Geo-Seis’s proposal was similarly deficient. Given that the Navy effectively waived this requirement for both offerors, there is no basis to find that Geo-Seis was prejudiced by the agency’s actions.³ Williams Bros. Corp. of Am., B-293352, Feb. 26, 2004, 2004 CPD ¶ 68 at 2; Food Servs., Inc., B-243173, B-243173.2, July 10, 1991, 91-2 CPD ¶ 39 at 6 n.2; Mediq Equip. & Maint. Servs., Inc., B-242222, Mar. 26, 1991, 91-1 CPD ¶ 328 at 3. Competitive prejudice is an essential element of every viable protest, and we will not sustain a protest where the record does not establish prejudice. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶ 143 at 10.

In any event, even were we to find that the agency effectively waived the proof of ownership/binding agreement requirement set forth in the RFP for only the awardee, there still would be no reasonable possibility that the protester was prejudiced by the agency’s allegedly improper action. In cases such as this, where the protester

² Because a protective order was not issued in connection with this case, the language in our decision, which is based in part upon source selection sensitive and confidential information, is necessarily general.

³ After the record closed, Geo-Seis submitted additional information, complaining that Evergreen still had not finalized arrangements to provide helicopters under that firm’s contract. Protester’s Supplemental Information, Nov. 3, 2004. Given the agency’s waiver of the requirement to establish ownership of, or a binding agreement to purchase/charter, helicopters, these arguments do not provide us with any basis to question the agency’s selection of Evergreen’s proposal for award.

argues that the agency failed to ensure compliance thereby waiving a requirement, prejudice does not mean that, had the agency ensured compliance and not waived the requirement, the awardee would have been unsuccessful. Rather, the pertinent question in such cases as this is whether the protester would have submitted a different offer that would have had a reasonable possibility for award had it known that the requirement would be waived. Brown & Root, Inc. and Perini Corp., a joint venture, supra, at 11. Here, there is nothing in the record that suggests, nor has the protester argued, that the protester would have submitted a different proposal that would have had a reasonable possibility of award if it were aware that the agency would waive the proof of ownership/binding agreement requirement.

The protest is denied.

Anthony H. Gamboa
General Counsel